

Applicants: James D. Webb et al.
Serial No. 10/072,782
Page 9

REMARKS

In the Office Action dated November 17, 2004, the pending claims were rejected under 35 USC 103(a), with various combinations of references. Applicant respectfully traverses these rejections.

Claims 1, 2, 7 and 16-18 were rejected over Duffin et al. ("Duffin") in view of Brown. As acknowledged in the background section of the present application, Duffin teaches a patient management system wherein implanted medical devices "may be reprogrammed from the medical support network 50 to alter device operating modes and parameters." Col. 13, lines 64-66. The Examiner relies on this section and also indicates that it teaches "to transmit the at least one request . . . at a second selected time." Office Action, page 2. Applicant respectfully asserts that Duffin does not explicitly teach a temporal distinction between providing a command at the medical support network, providing that command to the control device 20, and finally providing that command to the IMD.

The Examiner further asserts that Duffin is silent as to the composition of the medical device network 50; hence, providing the justification to combine the Brown reference. Applicant respectfully points out that the Duffin reference fully enables the medical device network 50, rendering moot the Examiner's addition of Brown. For example, Duffin teaches that "at the medical support network, a base station is provided to be in the communication link with the monitor 30 or the patient worn communication device 40. The base station is preferably a microprocessor based system that includes the software and hardware needed . . . to interrogate and program the implanted medical devices." Col. 10, lines 15-23. Duffin further teaches that programmers are "devices capable of programming all the operating modes or functions of the implanted device and for initiating interrogation through the telemetry system." Col. 2, lines 40-49. Numerous examples of programmers for implanted medical devices are known, such as the Medtronic Model 9790 Programmer. Thus, despite the Examiner's

Applicants: James D. Webb et al.
Serial No. 10/072,782
Page 10

assertion to the contrary, Duffin is not "silent as to the composition of the medical network."

Nonetheless, the Examiner introduces the Brown reference, which is frankly irrelevant to both Duffin and the presently claimed invention. First Brown does not address implantable medical devices nor the telemetry systems required to communicate with, let alone program such IMDs. Brown teaches communication with a handheld device, much like a Nintendo Gameboy. Messages are sent from a remote computer to such a device and displayed to the patient. The Examiner asserts that Brown teaches a "programmer 62." The element 62 is a personal computer by which a physician can send messages to the patient's Gameboy equivalent; it is not a medical device programmer capable of programming an implanted medical device as required by Duffin or as used in the present claims.

On this basis alone, the combination is improper and must be withdrawn.

Claim 1, includes among other things, "a server operating to receive and store at least one request to modify the behavior of an implantable medical device (IMD) . . . from a programmer." As such devices are specifically claimed, their unique requirements for programming via telemetry cannot be dismissed. A medical device programmer is a term of art having a known meaning to those of skill in the art and is used as such in the present specification and claims. Claim 1 further includes "a monitor . . . to receive the at least one request from the server, subsequently conduct a programming telemetry session with the IMD, verify a status of the IMD indicating that the at least one request safely complies with a current programming state of the IMD, and transmit the at least one request to the implantable medical device at a second selected time." Neither Brown nor Duffin, alone or in combination teach or suggest this telemetry session and the safety verification. As such, the claim and those that depend therefrom are allowable.

The remaining claims are allowable for the same or similar reasons and Applicant respectfully requests withdrawal of the rejections. If there are any

Applicants: James D. Webb et al.
Serial No. 10/072.782
Page 11

formal matters remaining after this response, the Examiner is requested to telephone the undersigned attorney to attend to these matters.

Respectfully submitted,

Date: _____

1/20/05



Daniel G. Chapik
Reg. No. 43,424
(763) 514-3066
Customer No. 27581